1992

Park City Education Association v. The Board of Education of the Park City School District : Brief of Appellee

Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

PARK CITY EDUCATION ASSOCIATION Plaintiff/Appellant, vs. THE BOARD OF EDUCATION OF THE PARK CITY SCHOOL DISTRICT, Defendant/Appellee.	Civil No. 920688-CA Classification 15

BRIEF OF DEFENDANT/APPELLEE

APPEAL FROM THE THIRD CIRCUIT COURT,
SUMMIT COUNTY
Honorable Roger A. Livingston

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STATEMENT OF JURISDICTION

Plaintiff's appeal is from the final judgment of Judge Roger A. Livingston of the Third Circuit Court in and for Summit County, State of Utah entered December 8, 1992, R. 270-74, granting summary judgment for defendant-appellee and dismissing plaintiff-appellant's complaint with prejudice. An amended notice of appeal was filed on December 17, 1992. R. 275-276. This court has jurisdiction over the appeal pursuant to Utah Code Annotated § 78-2a-3(2)(d).

STATEMENT OF ISSUE AND STANDARD OF REVIEW

The issue presented in this matter is whether the trial court was correct in holding that Section 2.3 of the contract between the parties, which provides that the terms of the contract supersede and control over any conflicting Board policy or action, is invalid as an unlawful limitation on the Board's legislative authority.[1]

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[1] Section 2.3 of the Master Contract provides the following:

> 2.3 Agreement Supersedes Policy - In case of any direct conflict between the express provisions of this agreement and any Board of Education policy, practice, procedure, custom or writing not incorporated in this agreement, this agreement shall control.

The appropriate standard of review is correction of error. Schurtz v. BMW of North America, Inc., 814 P.2d 1108, (Utah 1991).

DETERMINATIVE STATUTES AND RULES

The following statutes are referred to herein and are set out verbatim below.

UCA § 34-20-7

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection; and such employees shall also have the right to refrain from any or all of such activities.

UCA § 53A-3-402(14)(a)

(a) A board shall make and enforce rules necessary for the control and management of the district schools.

(b) All board rules and policies shall be in writing, filed, and referenced for public access.

STATEMENT OF THE CASE

The Association commenced this action on behalf of two of its members, part-time teachers who claim entitlement to health insurance for the 1989-90 school year under the terms of a contract entered by the Board and the Association. The Association seeks damages for the two teachers as well as declaratory and injunctive relief. The Board defended by asserting that the two teachers in question elected to enter individual contracts with the Board, the terms of which specifically exclude them from insurance coverage.

The Association's complaint was filed in Third Judicial District Court for Summit County on April 12, 1990. R. 2-19. Following discovery, the parties filed cross-motions for summary judgment. R. 35-37, 187-188. The Board also moved to have the case transferred to Third Circuit Court. R. 35-37. The motion to transfer was granted, and the case was transferred to the Third Circuit Court on April 27, 1992. R. 219. Following oral argument on the two motions for summary judgment, R. 256, the Court ordered on September 16, 1992 that the Board's motion for summary judgment be granted, that the Association's motion be denied, and accordingly dismissed the complaint with prejudice. R. 257-58. The Court entered written conclusions of law on December 8, 1992. R. 270-74. The Association's appeal followed.

STATEMENT OF FACTS

On September 21, 1988 the Board and the Association entered a two year agreement. R. 55-56 (¶¶ 1, 3). The text of the contract is found at R. 7-18 and R. 157-218. The contract recognizes at Section 2.1 that "the Board has certain powers, discretion and duties, that under the Constitution and Laws of the State of Utah, may not be delegated, limited or abrogated by agreement with any party . . .." On June 27, 1989, the Board adopted policy GCDA which provides that employees working less than 25 hours per week are not eligible for health and accident insurance coverage. R. 109. A copy of Policy GCDA is included in the appendix at A-2.

By letter dated June 28, 1989, the Board informed Association member, Nancy Schulthess, that the Board had voted to offer her a one year job share teaching position with the District for the 1989-90 school year. R. 108. A copy of the letter is included in the appendix at A-3. The contract was offered under the guidelines of the previously adopted Policy GCDA. A copy of Policy GCDA was included with the June 28, 1989 letter. R. 109.

Ms. Schulthess signed the June 28, 1989 letter with the copy of Policy GCDA attached on June 30, 1989 indicating her acceptance of the position. R. 116. On December 12, 1989 Ms. Schulthess signed a one year job share contract for the 1989 to

1990 school year. R. 111, 116. A copy of the contract is included in the appendix at A-4.

The contract between Ms. Schulthess and the Board specifically provides that the Board and Ms. Schulthess are bound by the rules and regulations as set forth in the policies and procedures of the Board, as they may be amended from time to time. R. 111. Under the terms of her contract, Ms. Schulthess agreed to work 20 hours per week. R. 111.

Association member Margery Hadden was aware that Policy GCDA was adopted on or about June 27, 1989. R. 139-140. Ms. Hadden signed a one year, job share contract on December 15, 1989 providing for half-time employment during the 1989-90 school year. R. 113, 139-140. A copy of the contract is included in the appendix at A-5.

The contracts between Ms. Hadden and the Board and Ms. Schulthess and the Board specifically provide that the parties are bound by the rules and regulations as set forth in the policies and procedures of the District, as they may be amended from time to time. R. 111, 113. Under the terms of Policy GCDA the two part-time teachers are not entitled to insurance benefits.

SUMMARY OF THE ARGUMENT

The Association alleges that the Board is restricted in its actions by the terms of the master contract. It attempts to enforce a provision of the master contract which states that if the terms of the contract conflict with the Board's policies or actions, the master contract prevails. If binding, such a contractual provision would be an unlawful limitation on the Board's legislative and decision making authority. The Board cannot be precluded from amending its policies, adopting additional policies or rescinding existing policies. The Board is statutorily required to make and enforce rules necessary for the control and management of the district's schools, including setting and maintaining a budget for the district, governing employee wages and benefits, and many additional matters vital to the operation of the district. This Court has already held that legislative bodies cannot delegate their authority, and Utah law is clear that no agreement can lawfully supersede the board's authority and duty to act.

The Utah Attorney General's office has also determined stating that a board of education cannot subject modification of its policies to the approval of a local teachers' association or union. An attempt to enter such an agreement is not be within the legislative intent for the operation of local districts.

This court's decisions and the Utah Attorney General's office have made clear that a board is free to modify and repeal policies adopted by its predecessor boards. A school board cannot bar itself or future board from adopting subsequent resolutions which may alter earlier established policies. Collective bargaining agreements, where allowed, may not include delegation or surrender of a statutory duty. The Association's interpretation of the master contract would wrest from the board its authority to make binding policies and to modify, amend, or repeal its own policies. This is clearly contrary to controlling law.

The master contract itself recognizes that certain powers, discretion and duties of the board may not be delegated, limited or abrogated by agreement with any party. The Association's argument that collective bargaining agreements are enforceable regardless of the substance of those agreements is not supported by the Association's own agreement with the board. Thus, to the extent the master contract attempts to limit the decision making authority of the Board, the master contract is unlawful. In addition, the cases relied upon by the Association are distinguishable, and in fact support the very position opposed by the Association in this appeal.

The Association also argues that Utah statutes allow the Board to enter any contract, regardless of the terms of that

contract and regardless of whether or not it delegates or abrogates the Board's authority. However, the plain language of UCA § 53-A-3-411(1) only limits the term of lawful agreements. It does not in any way allow the Board to unlawfully delegate its authority, and does not validate otherwise unlawful contracts.

Utah law allows individuals to contract directly with their employer regardless of existing collective bargaining agreements. The Association alleges that the Board is prohibited from negotiating directly with the Association's individual members because it claims the master contact supersedes those individual negotiations and contracts. UCA § 34-20-7 specifically provides that while employees to have the right to bargain collectively, they also have the right not to bargain collectively. The two members of the Association involved in this action both entered into contracts expressly subject to the Board's policy GCDA, which had been adopted prior to the time the individual contracts were entered. The teachers knew that those contracts did not entitle them to any benefits and they chose to enter the contracts with that clear understanding. By doing so they exercised their right to bargain with the Board individually. They cannot now claim that those contracts are unenforceable due to the existence of a master contract.

The Association argues extensively that collective bargaining agreements are allowed under Utah law. However, that

issue is not before this court. The sole issue on appeal is whether ¶ 2.3 of the master contract is an invalid and lawful limitation on the Board's legislative authority. The court should not and need not decide whether collective bargaining is appropriate for public employees under Utah law. Regardless, this court has already held that in the absence of exclusive legislative language, statutes governing labor relations only apply to private industry and not to the state or its subdivisions. This court has also declared that public employees in this state generally have no collective bargaining rights. Therefore, there is no statutory collective bargaining right for public employees' associations in Utah. The vast majority of states hold that in the absence of such express statutory authority public officials do not have authority to enter collective bargaining agreements with public employees.

The law in Utah is clear that a board of education may not delegate its decision making authority or restrict or limit its authority through private agreement or through its own action. The authority of subsequent boards of education may not be limited by the actions of a prior board. The Association's interpretation of the master contract would prevent the Board from acting pursuant to statutory direction and exercising its legislative decision making authority to direct the affairs of the district. The Board would not be able to act to set or

direct its budget, or to negotiate and contract directly with its employees. The Board would be bound by the actions of prior Boards, with no ability to act in the interests of the district schools. The Circuit Court was correct when it determined that ¶ 2.3 of the master contract is an unlawful restriction on the Board's authority and the judgment of the Circuit Court should be affirmed.

ARGUMENT

The Association alleges that the Board is bound by the terms of the master contract, and that if the terms of the contract conflict with the Board's policies, the master contract prevails. For the reasons stated below, the Circuit Court correctly determined that this provision is an unlawful restriction on the legislative authority of the Board and constitutes an unlawful delegation and surrender of the Board's authority and responsibility to govern the affairs of the District. In particular, the Association's interpretation of the master contract denies the Board the right to control its own policies regarding such vital matters as employee benefits and wages. The Association's interpretation of the master contract would allow one board to restrict the authority of a subsequently elected board. It would prevent the Board from setting and governing its own budget, as required by statute. It would also prevent the

Board from entering contracts directly with its own employees. Assuming without admitting that collective bargaining agreements are authorized under Utah law for public employee associations, a review of the Association's arguments reveals that many if not all of its cited authorities stand simply for the principal that collective bargaining agreements should be allowed. However, the issue presented before the court in these proceedings is whether the specific provision of the master contract taking rule making authority away from the Board is an unlawful restriction on the Board's legislatively-mandated authority to govern the affairs of the district. Clearly such restrictions are not allowed.

As an additional and independent basis for the Court's decision to grant Appellee's Motion for Summary Judgment, Utah law expressly allows individuals to contract directly with their employer regardless of any existing collective bargaining agreement. That is precisely what the Association's members have done in this case. Their contracts were made directly with the District on an individual basis and are controlling. The individual contracts determine with certainty that the Association's members, Ms. Schulthess and Ms. Hadden, have no rights to the disputed benefits.

A. The Board May Not Be Precluded From Adopting or Amending Its Policies.

The Association has alleged that the Board should be bound by the terms of the master contract, and that if the terms of the master contract conflict with the Board's policies, the master contract should prevail. The Association cites § 2.3 of the master contract entitled "Agreement Supersedes Policy". Section 2.3 states:

> In case of any direct conflict between the express provisions of this agreement and any Board of Education policy, practice, procedure, custom or writing not incorporated in this agreement, this Agreement shall control. [Emphasis added.]

Under the Association's interpretation, this contractual provision would prevent the Board from amending its policies regarding benefits, compensation, personnel, termination and many other essential matters, thus taking away the Board's ability to properly and responsibly manage its affairs according to statutory requirements and standards. If binding, such a contractual provision would be an unlawful limitation on the Board's legislative authority. The Board of Education cannot be precluded from amending its policies, adopting additional policies, or rescinding existing policies, as these responsibilities have been specifically delegated to the Board by statute. UCA § 53A-3-402(14) issues a statutory mandate to the

Board to make and enforce rules necessary for the control and management of the district schools. In addition, the Board has many other statutory duties and responsibilities. See UCA § 53A-3-402 generally. As shown herein, no agreement can lawfully supersede the Board's authority and duty to act.

The principle that a legislative body cannot delegate, assign or restrict its decision making authority is set forth clearly in Salt Lake City v. Int'l Ass'n of Firefighters, 563 P.2d 786 (Utah 1977). In that case, the state legislature enacted the Firefighters Negotiation Act. One provision of the Act called for mandatory binding arbitration by an independent panel if the municipality could not agree on contract terms with its firefighters. The court held that the legislature cannot relinquish the decision making authority of the legislative body to a private entity, in that case an arbitrator, especially when the private entity is not accountable within the political process.

> The legislature may not surrender its legislative authority to a body where the public interest is subjected to the interest of a group which may be antagonistic to the public interest.

Id. at 789.

The court continued, stating that such delegation "is not consistent with the constitutional exercise of political power and a representative democracy." Id. The court then broadened

its holding to apply generally to all those who have been elected by a given constituency.

> Although the old delegation doctrine has been repudiated, there remains an underlying core of validity, which requires those who have been selected, by a given process, and from a given constituency, retain the power to make ultimate policy decisions and override decisions made by others.

Salt Lake City, 563 P.2d at 790.

The Board is an elected body, representing the electorate of the Park City School District. It holds decision making and policy making powers which cannot be delegated or restricted by agreement with private entities such as the plaintiff. Thus, the provision of the master contract which purports to override all conflicting Board policies is contrary to law and unenforceable.

The Association argues that the Salt Lake City case is distinguishable from the present case because the master contract "contains no provision delegating any portion of the Board's legislative authority to PCEA, to an arbitrator, or to any other body". Brief of Appellant at 17. However, the Board does not argue that this is a case involving delegation of responsibility to an arbitration panel. This is a case involving a contract provision, which, if enforced, would constitute an absolute surrender of the Board's legislatively delegated authority to govern its affairs through the enactment, amendment and recision of its policies. If the authority to make decisions on such

matters cannot be delegated to another party, it certainly cannot be surrendered or abdicated at the request of another party.

The Utah Attorney General's office has also interpreted the Salt Lake City case to state specifically that a Board of Education cannot subject modification of its policies to the approval of a local teacher's association or union. Utah Att'y Gen. Op. No. 86-40, August 11, 1986. An attempt to enter such an agreement would not be "within the legislative intent for operation of local districts." Id. at 1. The opinion continued:

> It is clear that local boards of education have the power to make policy and pass regulations. Making general policy for operation of the school district is clearly legislative in nature, and it is generally held that where this legislative policy making function is conferred upon a local board, the board cannot delegate this legislative power onto others. Antieu on Local Governmental Law, Volume 3A, §30Q: 404; Godbey v. Roosevelt School Dist., 131 Ariz. 13, 638 P.2d 235 (Ariz. App. 1981).
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> . . .
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> Thus, for a locally elected board to authorize a particular policy to be changed, altered or amended only by mutual agreement or consent of a private group with no responsibility to the public appears clearly to be beyond the legal authority of the board and contrary to the legislative intent for the elected board alone to maintain responsibility for and control of the operation of the district. 73 C.J.S. Public Administrative Law and Procedure, Section 92; Allen v. Board of Educ., 120 Utah 556, 236 P.2d 756 (Utah 1951); Johnson v. State Tax Comm'n, 17 Utah 2d 337, 411 P.2d 831 (Utah

1966); Salt Lake City v. Int'l Ass'n of Firefighters, 563 P.2d 786 (Utah 1977).

> In my opinion, a policy which can only be altered or amended by agreement or consent of a private group is beyond the legal authority of the board, is contrary to legislative intent, and is invalid to the extent such consent or agreement must be obtained.

Id. at 3.

Thus, under Utah law an attempt by the Association to bind the Board to a contract term which purports to supersede any conflicting Board policy is invalid and unlawful. The Board may not delegate its ability to act in its legislative capacity. That capacity includes the ability of the Board to at all times adopt, amend or rescind its policies according to the best interest of the district and its students. UCA § 53A-3-402(14).

The Utah Supreme court and the Utah Attorney General's opinion also make clear that a board is free to modify or repeal policies adopted by prior boards of education for the district. *See* Utah Att'y Gen. No. Op. 86-40, August 11, 1986 at 4. A school board cannot bar itself or future boards from adopting subsequent resolutions which may alter earlier established policies. This is a well-established principle applicable to all bodies with legislative powers. In People's Advocate, Inc. v. Superior Court, suit was brought to challenge a statutory initiative measure adopted at a recent election. Part of the initiative sought to govern the content of future legislation.

In striking that provision of the initiative, the Court agreed that:

> [the provision] runs afoul of the familiar principle of law that no legislative board, by normal legislative enactment, may divest itself or future boards of the power to enact legislation within its competence. (City and County of San Francisco v. Cooper, (1975) 13 Cal.3d 898, 929, 120 Cal. Rptr. 707, 534 P.2d 403; see also In re Collie, supra, 38 Cal.2d at p. 398; French v. Senate, supra, 146 Cal. at p. 608, 80 p. 1031.)

181 Cal. App.3d at 328, 226 Cal. Rptr. at 646-47. The Court then concluded that "neither house of the legislature may bind its own hands or those of future legislatures by adopting rules not capable of change." Id.

The courts in California again stated this well-established rule of law in City and County of San Francisco v. Patterson, 202 Cal. App.3d 95, 248 Cal. Rptr. 290 (Cal. App. 1988). In that case, a proposed initiative ordinance would have barred future boards of education from entering into real property leases for greater than certain periods of time at less than certain values. Suit was brought to prevent adoption and enforcement of the proposed ordinance. The plaintiffs argued that the people cannot employ the initiative process to bind future boards, which the Board itself cannot do. The Court agreed with plaintiff's reasoning, and cited Cooper, supra.

In City and County of San Francisco v. Cooper, (1975) 13 Cal.3d 898, 929, 120 Cal. Rptr. 707, 534 P.2d 403, the Board of

Education entered an agreement with a council of employee representatives which was later adopted by resolution of the Board. The agreement and resolution included a provision which purported to preclude the Board from subsequently revising or altering any of the other provisions of the resolution without approval of the employee representatives. A taxpayer brought suit to challenge the resolution, claiming inter alia that the provision in question effected a delegation of the Board's ultimate decision-making authority. The Court agreed, stating:

> It is a familiar principle of law that no legislative board, by normal legislative enactment, may divest itself or future boards of the power to enact legislation within its competence. [Citations omitted.] Thus, a school board cannot, by resolution, bar itself or future boards from adopting subsequent resolutions which may alter earlier established policies. Yet the portion of the resolution presently at issue purports to effectuate just such a result; it seeks to place all the terms of the present resolution beyond the reach of future board action, except as the certificated employee council agrees to such future action. Under the authorities cited above, such a provision cannot stand.

Cooper, 534 P.2d at 423. As in Cooper and the other cases relying on Cooper, the Association's interpretation of the master contract is an attempt to prevent the Board from exercising its ultimate decision-making authority. Its interpretation would prevent this Board and future boards from exercising that authority to govern its affairs through the enactment, recision

and amendment of its own policies. Such an interpretation bars the Board from controlling benefits to its employees in light of existing budget constraints. The Board cannot be contractually restricted from enforcing or implementing its policies. To the extent the master contract purports to restrict the Board's decision making authority, it is unlawful.

In Raines v. Independent School Dist. No. 6, 796 P.2d 303 (Okla. 1990), the board of education entered a collective bargaining agreement with the local education association. The agreement required that teacher grievances be submitted to binding arbitration. When a teacher attempted to implement the arbitration provision, the board refused unless the arbitrator's decision was only advisory. The court held that a school board may not negotiate a term in a collective bargaining agreement which involves delegation of a statutory duty or surrender of this duty vested in the board by statute. Id. at 304. See also, Mindemann v. Independent School Dist. No. 6, 771 P.2d 996 (Okla. 1989). Similarly, the Board in this case cannot relinquish its authority and responsibility to enact and amend rules necessary to govern the district. By claiming that the master contract supersedes all Board policies and actions, the Association takes the position that the Board has contracted away its right to exercise its decision making authority. The ultimate effect of the Utah Education Association's position is to wrest from the

Board its authority to make binding policies including the authority to set and govern its own budget. It also prevents the Board from entering contracts directly with its own employees. This is contrary to controlling law.

It is the responsibility of the party contracting with a governmental body to be aware of the unlawful nature of attempted delegation of authority. The court in Miller v. School Dist. No. 470, 744 P.2d 865 (Kan. App. 1987) stated:

> One who makes a contract with a municipal corporation is bound to take notice of limitations on its power to contract and also of the power of the particular officer or agency to make the contract. The municipal corporation cannot in any manner bind itself by any contract which is beyond the scope of its powers, and all persons contracting with the corporation are deemed to know its limitations in this respect.

Id. at 869. Thus, the Association is deemed to be on notice of the unlawful nature of its attempt to restrict the Board's authority through the master contract.[2]

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[2] That a board of education has authority to contract directly with its employees is evident from the powers statutorily granted to all local boards of education, as well as from related statutes governing rights of a board's employees. UCA § 53A-3-411(1) states that "a local school board may enter into a written employment contract for a term not to exceed five years." The power to contract is granted under the statute, with no restriction as to with whom the contract may be entered. In addition, UCA § 53A-8-103(1) clearly contemplates a board contracting directly with its educators, rather that only through an anociation, when if states "a local school board shall, by contract with its educators or their associations, ..." establish termination procedures. Also, employees are empowered to

The Association relies heavily upon the Colorado case of Littleton Educ. Ass'n v. Arapaho County School Dist., 191 Colo. 411, 553 P.2d 793 (Colo. 1976). The Association believes that this case provides authority to bind a board of education to the terms of a collective bargaining agreement regardless of the content of those terms. However, a complete reading of the Colorado court's decision in Littleton demonstrates that Littleton does not support the Association's position. In fact, just the opposite is true.

Littleton involved a collective bargaining agreement between the local board of education and Littleton Education Association. The agreement provided for submission of employment disputes to an impartial fact finder. The court upheld the agreement, but not before clearly explaining that under the terms of the agreement, the ultimate decisions regarding employment terms and conditions remained exclusively with the Board even after the collective bargaining agreement had been finalized:

> And we also point out that the subject agreement did not provide for binding arbitration on the points of disagreement when the negotiations broke down as involved in Greeley Police Union v. City Council of Greeley, Colo. 191 Colo. 419, 553 P.2d 790 (Colo. 1976). On the contrary, only the services of an impartial fact finder are provided for. The agreement specifically

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contract either collectively or individually, pursuant to UCA § 34-20-7.

> states that the fact finder's report ". . . shall be advisory only . . . .." If the parties are still at an impasse after the advisory report of the fact finder, the agreement provides that " . . . the board has the authority to make the final decision and determination on all unresolved issues, without further negotiation." (Emphasis added.)

Littleton, 553 P.2d at 796. It was at this point that the court held the district bound by the terms of the agreement because:

> Negotiations between an employer and employee organization entered into voluntarily as in this case, do not require the employer to agree with the proposal submitted by employees. Rather, the ultimate decisions regarding employment terms and conditions remain exclusively with the board. While the employees' influence is permitted and felt, the control of decision making has not been abrogated or delegated.

Id.

Thus, the court upheld the collective bargaining agreement addressed in Littleton because the resolution dispute provisions required the services of an impartial fact finder whose recommendations were only advisory. As the court stated, if the parties were then still at an impasse, the Board had the authority to make the final decision and determination on the unresolved issue, without further negotiation with the association. The court's reasoning makes clear that had the board not retained its legislatively delegated authority to make

the final decision in matters so important to its operation, the agreement would not have been upheld.

Littleton is factually distinguished from the case at hand because the master contract provision in this case does not provide for the ultimate decision-making authority to rest with the board of education; rather, the master contract purports to usurp the board's authority to make such final decisions regarding its governing policies and clearly abrogates the control of the board's decision-making authority. By arguing that the master contract controls if in conflict with any Board policy or action, the master contract would be an absolute bar to any Board effort to regulate its affairs regarding employee benefits, salary, personnel and many related matters. Thus, Littleton is not supportive of the Association's position in this case. It does support the position taken by Utah courts that decision making authority may not be abrogated or delegated. It must remain in the Board. Agreements which so provide may be upheld. Those which do not so provide are unlawful.

Interestingly, the Littleton court also expressly recognized that collective bargaining agreements "must not conflict with existing statutes concerning the governance of the state's school system". Id. at 797. The Park City master contract provision in question would prevent the Board from exercising its authority and statutory responsibility to make and enforce rules necessary

for the control and management of the District's schools. UCA § 53A-3-402(14). Therefore, under Littleton, the master contract provision cannot be enforced.

The Association also relies on Louisiana Teachers Ass'n v. Orleans Parish School Bd., 303 So.2d 564 (La. App. 1974), which concluded that a collective bargaining agreement was binding on the district. However, the court did not address the issue of whether such an agreement may limit, delegate, or abrogate a board's legislatively delegated authority. In fact, the agreement in that case was upheld for the very reason that "inasmuch as the board has not surrendered any decision making authority, we conclude there has been no unlawful delegation." Id. at 568. In that case there was no unlawful delegation and for that reason the agreement was upheld. The Louisiana case simply holds that an agreement which does not unlawfully delegate authority may be enforced. This case does not support the Association's argument because the master contract does unlawfully delegate or restrict the Board's authority.

The law in Utah is clear that a board of education may not delegate or abdicate its legislatively delegated decision making authority, particularly where it is given direct responsibility to adopt, amend and rescind policies and rules in its continuing efforts to properly manage the District schools. The primary case relied upon by the Association in its argument to the

contrary is in fact contrary to the Association's position. It should be noted that the master contract itself recognizes in § 2.1 that the Board has certain powers which cannot be delegated, limited or abrogated by agreement.

> 2.1 Limitation of Board Powers - The Board has certain powers, discretion and duties, that under the constitution and laws of the State of Utah, may not be delegated, limited or abrogated by agreement with any party. Accordingly, if any provision of this agreement, or any application of this agreement to any future coverage hereby shall be found contrary to law, such provision or application shall have effect only to the extent permitted by law, but all other provisions or applications of this agreement shall continue in full force and effect.

The master contract itself recognizes that the Board has duties and responsibilities which cannot be abrogated, delegated or limited by agreement with other parties. The Association's argument that collective bargaining agreements are enforceable regardless of the substance of those agreements is not supported by the Association's own agreement negotiated with the Board. To the extent the master contract attempts to limit the decision making authority of the Board through § 2.3, the master contract is unlawful.

The Association also argues that UCA § 53A-3-411(1) allows the Board to enter any contract, whether or not the contract delegates or abrogates the Board's authority. However, the plain language of that section merely limits the term of lawful

agreements. It does not in anyway allow the Board to unlawfully delegate its authority, and does not validate otherwise unlawful contracts. Therefore, the judgment of the Circuit Court should therefore be affirmed.

B. Utah Law Allows Individuals to Contract Directly with Their Employer Regardless of Existing Collective Bargaining Agreements.

The Association alleges that the Board is prohibited from negotiating directly with the Association's individual members because it claims the master contract supersedes those individual negotiations and agreements. However, Utah Code Ann. § 34-20-7 specifically provides that while employees do have a right to bargain collectively in Utah, they also have the right not to bargain collectively.

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aide or protection; and such employees shall also have the right to refrain from any or all such activities.

UCA § 34-20-7 (Emphasis added.) Plaintiffs' members Nancy Schulthess and Margery Hadden voluntarily elected to contract with the district directly and signed contracts with the Board individually. During the summer and fall of 1989, the plaintiff

and the Board were renegotiating the master contract. Specifically, the section regarding benefits was under renegotiation. While the contract was under renegotiation, both Ms. Schulthess and Ms. Hadden entered into contracts subject to the Board's policy GCDA, which had been amended during the negotiations and before the individual contracts were entered. That policy specifically defined the benefits to which they were entitled under their contracts with the Board. These teachers knew that under the contracts offered by the Board they were not entitled to any benefits and they chose to enter the contracts with that clear understanding. By doing so they exercised their right to bargain with the Board individually. Regardless of what they now claim in retrospect, the signed and executed contracts between Ms. Schulthess and Ms. Hadden and the Board are clear evidence of their intent to contract individually with the Board. They cannot now claim that those contracts are unenforceable.

The importance of an individual's right to contract with an employer despite the existence of a collective bargaining agreement is supported in Utah Att'y Gen. Op. No. 85-73, March 11, 1986. There, the Attorney General states that the collective bargaining process "is of great importance so long as it does not infringe on an individual's right to work or communicate directly with his employer. Id. at 3. Again in 1988 the Utah Attorney General issued a formal opinion, Utah Att'y Gen. Formal Op. 88-

002, June 13, 1988, affirming its previous position that an employee's right to contract directly with his/her employer may not be limited by law or by employee associations.

> Unlike a majority of states, Utah is a right to work state. Utah's right to work approach is premised on a preference for free choices of employees as opposed to mandatory union membership. An important implication of Utah's right to work status, as it effects this opinion, is that the basic free choice premise generally disfavors union exclusivity rights which tend to reduce a worker's right of choice.

Id. at 2.

The Attorney General's opinion also states that "the Utah Constitutional declaration that all men [women] have a right to acquire and protect property has been construed as including the right to work . . ." citing Golding v. Shuback Optical Co., 93 Utah 32, 70 P.2d 871 (Utah 1937), and McGrew v. Industrial Comm'n, 96 Utah 203, 85 P.2d 608 (Utah 1938). Under Utah law, employees have the right to directly contract with their employers regardless of a prior collective bargaining agreement. This is what these two teachers did. They contacted with the District with full knowledge that their contacts were subject to the then-existing policy regarding benefits. They cannot now attempt a rescission of those individual contracts because they find the terms less favorable than those in the collective bargaining agreement.

C. The Right of Public Employees to Bargain Collectively is not at Issue in this Case.

The Association argues extensively that collective bargaining agreements are or should be allowed under Utah law. However, that issue is not before the court. As stated in the Association's brief, the specific issue is whether Paragraph 2.3 of the master contract is an invalid, unlawful limitation of the Board's legislative authority. Brief of Appellant at 1, 2. The Court should not and need not decide whether collective bargaining is appropriate for public employees in order to address the issue presented. However, the Utah Supreme Court has clearly held that in the absence of exclusive legislative language, statutes governing labor relations only apply to private industry and not to the state or its subdivisions. Westly v. Board of City Comm'rs of Salt Lake City Corp., 573 P.2d 1279 (Utah 1978). In addition, the Utah Supreme Court has declared that "public employees in this state generally have no collective bargaining rights." Pratt v. City Council of the City of Riverton, 639 P.2d 172, 174 (Utah 1981), citing, Westly v. Board of City Comm'rs of Salt Lake City Corp., supra. As stated by the Utah Attorney General, "the clear implication is that public employee labor relations are not subject to a special labor code in Utah." Utah Att'y Gen. Formal Op. No. 88-002, June 13, 1988, at 2. Therefore, there is no statutory collective

bargaining right for public employees associations in Utah. Moreover, the great majority of states hold that in the absence of express statutory authority public officials do not have authority to enter collective bargaining agreements with public employees. Local 2238 AFSCME v. Stratton, 108 N.M. 163, 769 P.2d 76 (N.M. 1989). The Association's extensive references to legislation adopted in the 1993 Legislative Session is not relevant. The law applicable is the law in existence at the time the case was decided in the Circuit Court.[3] Therefore, the 1993 Legislative enactments have no bearing on this issue. Moreover, as stated above, this issue is not before the court and should not be addressed in this appeal.

CONCLUSION

The law in Utah is clear that a school board may not delegate its decision making authority or restrict or limit its authority in any way. The Circuit Court was correct when it determined that § 2.3 of the master contract is an unlawful

[3] A statute cannot be given retroactive effect unless the legislature expressly declares such an intent in the statute. Washington Nat'l. Ins. Co. v. Sherwood Ass'n, 795 P.2d 665 (Utah App. 1990); Matter of Disconnection of Certain Territory from Highland City, 668 P.2d 544 (Utah 1983).

restriction on the Board's authority, and therefore the judgment of the Circuit Court should be affirmed.

DATED this 26th day of July, 1993.

Respectfully Submitted,

KIRTON, McCONKIE & POELMAN

Brinton R. Burbidge
Blake T. Ostler
Stuart F. Weed
Attorneys for Defendant/Appellee

CERTIFICATE OF SERVICE

I, Stuart F. Weed, certify that on July 26th, 1993 I served four copies of the attached BRIEF OF DEFENDANT/APPELLEE upon ROBERT H. CHANIN and JOHN M. WEST, Bredhoff & Kaiser, 1000 Connecticut Ave., N.W., Suite 1300 , Washington, D.C. 20036 AND MICHAEL T. MCCOY, 875 East 5180 South, Murray, Utah 84107, counsel for the appellant, in this matter by mailing them to him by first class mail with sufficient postage prepaid to the following address:

ROBERT H. CHANIN
JOHN M. WEST
Bredhoff & Kaiser
1000 Connecticut Ave., N.W., Suite 1300
Washington, D.C. 20036

MICHAEL T. MCCOY
875 East 5180 South
Murray, Utah 84107

Stuart F. Weed

Brinton R. Burbidge
Blake T. Ostler
Stuart F. Weed
Attorneys of Record

ADDENDUM

INDEX

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Telephone: (801) 328-3600

IN THE THIRD CIRCUIT COURT IN AND FOR

SUMMIT COUNTY, STATE OF UTAH

PARK CITY EDUCATION ASSOCIATION,	:	
Plaintiff,	:	CONCLUSIONS OF LAW AND ORDER
vs.	:	
PARK CITY SCHOOL DISTRICT,	:	Civil No. 92 CV 0019
Defendant.	:	Judge _____

This matter comes before the Court on cross Motions for Summary Judgment. Defendant Park City School District filed a Motion for Summary Judgment and Memorandum in support thereof. Plaintiff Park City Education Association responded by filing its own Motion for Summary Judgment together with a joint memorandum in opposition to Defendant's motion and memorandum in support of its own motion. Defendant then filed a reply memorandum and the motions were submitted for decision with a request for oral argument.

The Court heard arguments by counsel on both Motions on Tuesday, August 4, 1992. Plaintiff was represented by Robert G. Wing, attorney. Defendant was represented by Brinton R. Burbidge, attorney. The Court, having reviewed the memoranda in support of and in opposition to the respective Motions for Summary Judgment, and having considered the arguments of counsel, makes the following Findings and Conclusions of Law.

Plaintiff brought this action on behalf of two of its members who allege they have incurred damages as a result of a dispute in entitlement to health insurance coverage. The members are Nancy Shulthess and Margery Hadden. The Plaintiff's claims in this matter center on the District's contractual obligations with Ms. Hadden and Ms. Schulthess. The undisputed facts are clear that both of these individuals entered into a specific contract with the Park City Board of Education for half-time employment. Each contract contained the following provision incorporating and binding the parties to District policies and procedures:

> 5. The Board of Education is bound by the adopted rules and regulations as stipulated in the policies and procedures. As an employee, you also agree to be bound by these rules and regulations as they may be amended from time to time.

Ms. Hadden and Ms. Schulthess entered into their contracts with full knowledge and notice of the terms of the policy affecting insurance coverage for half-time or part-time employees. The Board of Education adopted the policy in question prior to Ms.

Schulthess and Ms. Hadden signing their contracts and prior to the time they began their half-time duties for the 1989-1990 school year. Prior to entering their contracts with the District, each had notice of and/or received a copy of policy GCDA determining entitlement to health and accident insurance coverage. Therefore, this policy as well as all of the policies of the District became and were part of the contracts between the Board of Education and Ms. Schulthess and Ms. Hadden. Therefore, they are bound by the terms of this policy and are not entitled to any additional health or accident insurance benefits other than those provided for by that policy. Because both teachers contracted for only 20 hours per week, they were not eligible for health and accident insurance coverage under the terms of policy GCDA.

Plaintiff argues that the individual contracts between the two of its members and the Board of Education are unenforceable because the members elected to have the Plaintiff represent them in contract negotiations. Plaintiff then argues that the Board of Education cannot negotiate directly with plaintiff's members and the two individual contracts are therefore invalid. In support of its position, Plaintiff draws analogies to the National Labor Relations Act ("NLRA") and its case law. However, there is no reference in the master contract between the Plaintiff and the Defendant which can be interpreted as incorporating the NLRA or its resultant case law. Also, the NLRA and the Utah counterpart thereto are not binding upon the Defendant and do not restrict the Defendant's direct negotiations with Plaintiff's members. Therefore, Plaintiff's

claims that the individual contracts between the Board of Education and its members are invalid is without merit.

Plaintiff also alleges that the Board of Education is prohibited from negotiating directly with Plaintiff's individual members because those members have chosen to be represented by the Plaintiff. However, UCA § 34-20-7 specifically provides that while employees have a right to bargain collectively, they also have a right not to bargain collectively. Individual employees may contract directly with a school district's board of education. Plaintiff's members, Ms. Schulthess and Ms. Hadden signed contracts with the Board of Education individually. They knew that under the terms of their contracts, they were not entitled to any benefits and they chose to enter the contracts with that clear understanding. Regardless of what they now claim in retrospect, the signed and executed contracts between Ms. Schulthess, Ms. Hadden, and the Board of Education are clear evidence of the contract and agreement with the Board.

Plaintiff also argues that the master contract by its own terms takes precedence over Board policies which conflict with the provisions of the master contract. Plaintiff argues that policy GCDA cannot be binding upon its members because the master contract conflicts with the policy. Such a contractual provision would prevent the Board of Education from amending its policies regarding benefits, compensation, personnel, termination, and many other provisions, thus taking away the Board's ability to properly and responsibly manage its affairs according to statutory requirements and

standards. Moreover, such a provision would be an unlawful limitation on the Board's legislative authority. The Board of Education cannot be precluded from amending its policies, adopting additional policies, or rescinding existing policies.

Therefore, the Court concludes that policy GCDA, regarding benefits for part-time employees of the Board of Education, was in force at the time that Ms. Schulthess and Ms. Hadden entered their individual contracts with the Board. Individual employees of the school district are bound by policies adopted by the Board of Education. The contracts between Ms. Schulthess and Ms. Hadden and the Board of Education are enforceable.

Thus, there being no genuine issues of material fact and it appearing that Defendant is entitled to judgment as a matter of law, the Plaintiff's Motion for Summary Judgment is denied and the Defendant's Motion for Summary Judgment is granted. This Court hereby ORDERS that the plaintiff Park City Education Association's Motion for Summary Judgment is denied, defendant Park City School District's Motion for Summary Judgment is granted, and plaintiff's Complaint is DISMISSED WITH PREJUDICE, each party to bear its own costs.

DATED this 8th day of ~~October~~ Dec, 1992.

BY THE COURT:

CIRCUIT COURT JUDGE

JOB SHARING

Job sharing is a voluntary program providing two or more employees the opportunity to share one position. In cases where it is mutually advantageous to both the school district and employees, a job-sharing arrangement may be implemented. Wages, fringe benefits, and all other benefits shall be prorated on the basis of the time worked as a percent of a full-time equivalent position. However, any employee contracted for less than 25 hours per week will not be eligible for health and accident insurance coverage. Employees working less than full-time will not receive credit for a step increase on the salary schedule the next school year. Employees working at least one half-time F.T.E. will receive one full step every two years.

Teachers who job share should generally teach each day, either morning or afternoon. It will not be deemed appropriate to adopt schedules which anticipate long absences of teachers; i.e. extended vacations, or additional personal days. Whenever a sharing teacher is absent from his/her work as per the pre-arranged schedule, a record of his/her absence will be maintained by the principal's office and reported to the payroll office. All absences will be recorded.

To assure an orderly process, an application must be submitted no later than the following dates:

January 15 - Written proposal submitted to principal for the position starting at the beginning of the next school year. Each request is for one school year only. If applicants are presently sharing a position, they will need to apply each year for the continuation of the job-sharing position. All applicants for each position must apply as a team.

February 7 - Written proposal with principal's recommendation submitted to the superintendent of schools.

March - At the first regular Board of Education meeting the written proposal with both the principal and superintendent's recommendation will be submitted to the Board.

April 15 - Approval or rejection of written proposal by the Board of Education.

If a teacher decides he/she would like to share one position and can find another teacher already within their school, they should contact their principal before January 15th. If a teacher within their school is not interested in job sharing and one teacher would like to find another teacher in a school within the district, or outside the district, Policy GCD and Policy GCI will be followed.

Upon Board approval, each applicant must sign a job-share contract for the shared position. Each applicant must agree to return to full-time status in the event one of the participants in a shared job is unable to continue in the shared assignment. If a teacher on a job-share contract is granted a leave of absence, the shared assignment becomes null and void. Each applicant for a job-sharing position must be certified to teach those subjects/grade levels involved in the shared job. If the teachers or the Board decide to discontinue the job-sharing position at the end of a school year, and if there is no other comparable position available in the School District, the Board will decide which of the two teachers to retain in accordance with the policies and criteria set forth in the Reduction of Professional Staff Work Force Policy, adopted 9/13/88.

Time necessary for coordination of teaching assignment responsibilities shall be performed on the job-sharing teachers' time and not the district's. When teachers have the responsibility for the same students both teachers must attend parent/teacher conferences. Both members of job-sharing team must attend <u>all</u> faculty meetings, in-service activities, and any other school activity requiring other teachers attendance.

EDUCATIONAL EXCELL.

Park City Schools

1250 Iron Horse Drive P.O. Box 680310 Park City, Utah 84068 (801) 649-9671

June 28, 1989

Mrs. Nancy Schulthess
P. O. Box 680741
Park City, Utah 84068

Dear Nancy:

Congratulations! The Park City Board of Education voted at their June 27, 1989, Board Meeting to offer you a one year, job-share, second grade teaching position at Parley's Park Elementary School under the guidelines of the adopted Job Share Policy No. GCDA.

You will be issued a formal contract as soon as negotiations are settled between P.C.E.A. and the Park City Board of Education.

You must be appropriately certified for the elementary level and a copy of your certificate must be on file in the District Office by August 15, 1989.

Sincerely,

Sandra Hall

Sandra Hall

Please sign and return one copy of this letter.

Signature Nancy K Schulthess

Date 6-30-89

EDUCATIONAL EXCELL

Park City Schools

1250 Iron Horse Drive P.O. Box 680310 Park City, Utah 84068 (801) 649-9671

EMPLOYMENT CONTRACT FOR CERTIFIED STAFF

One Year Job Share Contract

Nancy Schulthess
P. O. Box 680741
Park City, UT 84068

The Park City School District Board of Education and the undersigned employee hereby enter into an employment contract for the 1989-90 school year based on the certified salary schedule LANE: BS, STEP: 4, and a FULL-TIME EQUIVALENCY OF: 0.50. Attached is a 1989-90 salary schedule.

1. The contract will be for the minimum 184 working days as adopted by the Board of Education.

2. In addition, you may be eligible for additional salary.

3. In the event you have completed less than three (3) consecutive years with the Park City School District, your status will be that of a provisional employee.

4. This contract is void if a valid and appropriate Utah teaching certificate was not on file by November 1, 1989.

5. The Board of Education is bound by the adopted rules and regulations as stipulated in the policies and procedures. As an employee, you also agree to be bound by these rules and regulations as they may be amended from time to time.

Attachment

Park City Board President

Nancy Schulthess
Employee

12-12-89
Date

DEPOSITION EXHIBIT 2

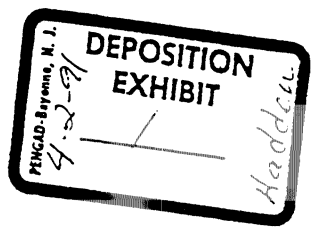
EDUCATIONAL EXCELLEr

Park City Schools

1250 Iron Horse Drive P.O. Box 680310 Park City, Utah 84068 (801) 649-9671

EMPLOYMENT CONTRACT FOR CERTIFIED STAFF

One Year Job Share Contract



Margery Hadden
520 Parkview Drive
Park City, UT 84060

The Park City School District Board of Education and the undersigned employee hereby enter into an employment contract for the 1989-90 school year based on the certified salary schedule LANE: BS + 55, STEP: 7, and a FULL-TIME EQUIVALENCY OF: 0.50. Attached is a 1989-90 salary schedule.

1. The contract will be for the minimum 184 working days as adopted by the Board of Education.

2. In addition, you may be eligible for additional salary.

3. In the event you have completed less than three (3) consecutive years with the Park City School District, your status will be that of a provisional employee.

4. This contract is void if a valid and appropriate Utah teaching certificate was not on file by November 1, 1989.

5. The Board of Education is bound by the adopted rules and regulations as stipulated in the policies and procedures. As an employee, you also agree to be bound by these rules and regulations as they may be amended from time to time.

Attachment

Park City Board President

* Margery White Hadden
Employee

12/15/89
Date

* Subject to determination of the grievance which is presently